



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 28, 2006

The Honorable Robert Bunda
Twenty-Third Legislature
State Capitol
Honolulu, Hawaii 96813

Re: S.B. 995—Abolishing the Constitutional Retirement Age for Judges

Dear President Bunda:

On Tuesday May 2, 2006 you will be voting on a constitutional amendment to abolish the retirement age for judges. On April 19, 2006, pursuant to Article XVII, section 3 of the Constitution, the Legislature provided me notice of the final form of the proposed amendment, so that I could convey to you my concerns and objections. **I convey those concerns and objections herein, and respectfully ask you to vote against this proposed amendment.**

I believe this proposed amendment--which applies to sitting judges and not just new judges--represents poor public policy, perpetuates an under-representation of women on the bench, has been hastily proposed without sufficient thought, and, to the extent it is intended to and does benefit a few sitting judges, is just plain wrong.

The Hawaii Judicial Selection Commission⁵³ testified against this amendment:

"We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will therefore, impede the introduction of new ideas and ways of looking at the law. Additionally, we feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges."

⁵³ There are nine members on the Commission; two are appointed by the Governor, two by the Senate President, two by the Speaker, one by the Chief Justice, and two are elected by the bar. The testimony was signed by Commission Chair Melvin Chiba, who was appointed to his position on the Commission by the Senate President.

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This amendment will perpetuate reduced judicial opportunities or delayed entry into the judiciary for women. As a blue ribbon task force in New York on "Mandatory Retirement of Judges" specifically stated:

"[C]ontinuation of judicial service beyond age 70 [should] not [be] at the expense of reduced judicial opportunities or delayed entry into the judiciary for women and minority lawyers. Regular turnover invigorates the judiciary by bringing fresh ideas and greater diversity to the bench. . . [We note] the relatively high diversity [among judges, in the last] five years, and the relatively low diversity among the group of Justices most recently certificated for service beyond age 70."

Thirty-six states impose mandatory retirement ages for justices and judges between the ages of 70 and 75. And were this bill adopted, Hawaii would join just one other state with no mandatory retirement age, and no involvement by the electorate, the Governor, or the Legislature after initial appointment.

There is also a very strong perception that this bill is intended to benefit just a few sitting judges—or else why does it not apply only to new judges? Why are the rules being changed in the middle of or at the end of terms of judges appointed under a clear set of rules?

I would not oppose changing the rules prospectively, although I note there are other alternatives to simply completely abolishing the judicial retirement age. However, I strongly oppose this amendment, and respectfully ask you to vote against this amendment and continue the dialogue on this issue in 2007.

Sincerely,



LINDA LINGLE

Enclosure



Judicial Selection Commission - THE JUDICIARY - STATE OF HAWAII
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March 23, 2006

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Representative Dwight Takamine
Chair, Finance Committee
Hawaii State House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Representative Takamine:

Re: SB995 SD1: Judges; Mandatory
Retirement Age (ConAm)

The Judicial Selection Commission appreciates this opportunity to express some concerns about this proposed constitutional amendment. The Commission believes that the proponents of this legislation are convinced that this change is in the public interest, but we feel an obligation to share our reservations with the House Finance Committee.

We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law. Additionally, we feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

The Judicial Selection Commission once again thanks the House Finance Committee for allowing us to express our concerns.

Sincerely yours,

Melvin Chiba

Melvin Chiba, Chair

cc. Representative Sylvia Luke, Chair
House Judiciary Committee